

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

BOBBY PLAIN,

Plaintiff,

v.

GENE STUBBLEFIELD, et al.,

Defendants.

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No. 4:16CV540 AGF

**MEMORANDUM AND ORDER**

Plaintiff, a prisoner, seeks leave to proceed in forma pauperis in this civil action under 42 U.S.C. § 1983. Having reviewed plaintiff's financial information, the Court assesses a partial initial filing fee of \$12, which is twenty percent of his average monthly deposit. *See* 28 U.S.C. § 1915(b). Additionally, the complaint is barred by the statute of limitations.

**Standard of Review**

Under 28 U.S.C. § 1915(e), the Court is required to dismiss a complaint filed in forma pauperis if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. To state a claim for relief under § 1983, a complaint must plead more than "legal conclusions" and "[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A plaintiff must demonstrate a plausible claim for relief, which is more than a "mere possibility of misconduct." *Id.* at 679. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678. Determining whether a complaint states a plausible claim for relief [is] a

context-specific task that requires the reviewing court to draw on its judicial experience and common sense. *Id.* at 679.

### **The Complaint**

Plaintiff brings this action against several officials and former officials of the City of St. Louis and the City of St. Louis City Justice Center. Plaintiff alleges that from July 2009 through March 2011 several of his constitutional rights were violated. He claims that he was denied religious accommodations because he is Wiccan, that he was denied recreation, that staff often left his unit unattended, and that he was subjected to racial discrimination.

### **Discussion**

“Although the statute of limitations is an affirmative defense, a district court may properly dismiss an in forma pauperis complaint under 28 U.S.C. § 1915[] when it is apparent the statute of limitations has run.” *Myers v. Vogel*, 960 F.2d 750, 751 (8th Cir. 1992). Section 1983 claims are analogous to personal injury claims and are subject to Missouri’s five-year statute of limitations. *Sulik v. Taney County, Mo.*, 393 F.3d 765, 766-67 (8th Cir. 2005); Mo. Rev. Stat. § 516.120(4). For purposes of the prison mailbox rule, plaintiff filed this action on April 13, 2016. More than five years passed since any of the alleged harms occurred. Therefore, this action is barred by the limitations period.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff’s motion to proceed in forma pauperis [ECF No. 2] is **GRANTED**.

**IT IS FURTHER ORDERED** that the plaintiff must pay an initial filing fee of \$12 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to “Clerk, United States District Court,” and to include upon it: (1) his name; (2) his

prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

**IT IS FURTHER ORDERED** that this action is **DISMISSED** without prejudice.

An Order of Dismissal will be filed separately.

Dated this 21<sup>st</sup> day of April, 2016.

  
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AUDREY G. FLEISSIG  
UNITED STATES DISTRICT JUDGE